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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 207

THE RARITAN COMPANY OF DELAWARE, INC.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

PAUL F. MYERS,
JAMES CRAIG PEACOCK,
Counsel for Petitioner.

KENNETH PERRY,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI.

The petitioner by its counsel prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered on June 7, 1943, (R. 21) in which that court affirmed a decision of the United States Board of Tax Appeals (R. 1) in a personal holding company surtax case.

STATEMENT OF THE CASE.

On May 19, 1932, $541,710 was borrowed from the Chase National Bank of New York City by petitioner's wholly owned subsidiary. This indebtedness (which remained at all times evidenced by the subsidiary's collateral demand note of that date and amply secured by the same stock which

had originally been owned and posted by the subsidiary) was liquidated by a series of one or more payments each year until 1939, when the remaining balance was finally paid off. All payments were made by the subsidiary until it was dissolved in 1936, at which time title to its assets, subject of course to the indebtedness on the note to the Chase Bank, passed to petitioner by whom the subsequent payments were made, and to whom both the original note of May 19, 1932, and the collateral which secured it were surrendered at the time of final payment. These facts and the circumstances through which they arose are set forth more fully in the Board's findings at R. 4-6, and a facsimile of the collateral note will be found at R. 14-15.

The issue about to be presented to this Court arose out of the deduction claimed by petitioner under Section 355(b) of the Revenue Act of 1936, as amended, for $25,000 paid by it in 1937 on account of liquidation of the above indebtedness. Section 355 related to determination of income subject to personal holding company surtax for that year, and paragraph (b) allowed the deduction of

> "(b) Amounts used or irrevocably set aside to pay or retire indebtedness of any kind incurred prior to January 1, 1934 * * *." (50 Stat. 816; now Sec. 504(b) of the Internal Revenue Code.)

Petitioner's claim that the term "indebtedness of any kind" as there used includes the existing debt structure on January 1, 1934, of a closely integrated corporate group such as was constituted by petitioner and its subsidiary is, it submits, confirmed beyond question by the legislative history of the statute.

What the court below did in this particular case may be a matter of interest primarily to the parties and to others similarly situated (Cf. R. 7), but the way in which the court did it raises an issue of far more general interest and importance. For by completely ignoring all reference to the opinions of this Court in *United States* v. *American Trucking Company,* 310 U. S. 534, 543, and *Harrison* v. *Northern*

Trust Company, 317 U. S. 476, 479 (although the opinions in both cases were quoted in petitioner's brief at even greater length than in its present supporting brief at pages 13-14 *infra*), and by declining to consider the legislative history of the statute in connection with the facts of the instant case, the court below necessarily held in effect* that the unqualified rule announced in those cases for some undisclosed reason no longer applies to this particular statutory provision, thus giving rise to the

QUESTION WHICH IS HERE PRESENTED.

Does the decision of the court below (viz.—that the indebtedness in this case was not a pre-1934 "indebtedness of any kind" within the meaning of the statute) so conflict both with the applicable decisions of this Court in the general field of statutory construction, and with its own decisions and that of another Circuit Court of Appeals in the special field of the application of this particular statutory provision, as to create an extremely unhealthy state of confusion in the administration of the revenue statutes?

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

1. The decision of the court below ignores and directly contravenes the deliberate purpose and intent of Congress (a) to provide "cushions" which would "relieve personally owned corporations" from this added tax on current earnings to the extent that such earnings are needed to retire "pre-1934 debts" (this tax was first imposed in 1934), and (b) to safeguard this provision by making sure that "no

*Note:—In order that there may be no misunderstanding it should be pointed out that at least two claims suggested and disposed of in the opinion below at R. 20 have at no time been urged by petitioner, are not necessary to its case, and are in reality little more than straw men set up as well as knocked down by the court below. Petitioner has never claimed that the phrase "indebtedness of any kind incurrred" is to be applied broadly to anyone who after the statutory date assumes to pay what someone else has earlier promised to pay. Neither has it claimed that the separate corporate existence of itself and its subsidiary should be disregarded.

corporation can be formed [on or after January 1, 1934] for the purpose of taking advantage of this deduction," but with no thought of denying it with respect to the "existing debt structures" of then existing corporate groups. (The quotations are all from the Congressional committee reports, except the last one which is from an illuminating opinion of this same court below in another case, all as more fully developed in petitioner's supporting brief at pages 8-12, *infra.*)

2. The decision of the court below is therefore in direct conflict with the decision of this Court in *Ozawa* v. *United States,* 260 U. S. 178, 194, that it is the duty of the courts to give effect to the intent of Congress, and "to look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose."

3. The decision of the court below is similarly in direct conflict with the decisions of this Court in *Harrison* v. *Northern Trust Co.,* 317 U. S. 476, 479, and *United States* v. *American Trucking Co.,* 310 U. S. 534, 543, that the legislative history of a statute may be considered in ascertaining its meaning, no matter how clear its words may appear on superficial examination. See petitioner's supporting brief at pages 12-14, *infra.*

4. The decision of the court below is likewise in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner* v. *Grant Trading Co.,* 135 F. 2d. 358, as well as with its own decisions in several earlier cases, including *Commissioner* v. *Sun Pipe Line Co.,* 126 F. 2d. 888, and *Phillips* v. *Commissioner,* 134 F. 2d. 73, both of which are cited with approval and followed in the *Grant Trading Co.* case. All three of the cited cases related to this same identical provision allowing the deduction of amounts used to pay "indebtedness of any kind." In all of them there had been changes after January 1, 1934, much more material in both substance and form than

in the instant case. Creditors had been completely replaced one or more times through refunding operations in new amounts, at new rates of interest, for new terms, and generally on new conditions that bore little or no resemblance to those of the "pre-1934 debts." And in all of them the courts not only overruled the disallowance by the Commission of the deductions claimed by the taxpayer, but did so on the express ground that effect must be given to the legislative intent and purpose as shown by the legislative history. See petitioner's supporting brief at pages 15-17, *infra.*

WHEREFORE it is respectfully submitted that the petition should be granted.

PAUL F. MYERS,
JAMES CRAIG PEACOCK,
Counsel for Petitioner.